

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHELLE MATHIS-KAY, Individually and as  
Administratrix of the Estate of EARL A. KAY,

Plaintiff,

v.

**ORDER**  
06-CV-815S

MCNEILUS TRUCK & MANUFACTURING, INC.,  
MCNEILUS TRUCK & MANUFACTURING, CO.,  
MCNEILUS COMPANIES, INC.,  
OSHKOSH TRUCK CORPORATION,

Defendants.

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Presently before this Court is a Petition of Plaintiff Pursuant to Local Rule 41.1(c). This action arises out of a products liability case involving the injury and death of Earl Kay. Because this action is brought on behalf of an estate, it cannot be settled without leave of this Court. See Local Rule 41(a)(2).

This Court has considered Plaintiff's application and the papers filed in support thereof, and finds that no hearing is required. This Court further finds that the proposed settlement is in the best interests of the estate. In so finding, this Court has considered (1) the circumstances giving rise to the claim, (2) the nature and extent of damages, (3) the terms of the proposed settlement and amount of attorneys' fees and other disbursements, (4) the circumstances of any other claims or settlements arising out of this same occurrence, and (5) the plaintiff's statement of why she believes this settlement is in the best interests of the estate. See Local Rule 41(a)(2)(i)-(iv). Plaintiffs' application will therefore be granted and this settlement approved.

IT HEREBY IS ORDERED, that the Petition of Plaintiff Pursuant to Local Rule 41.1(c) (Docket No. 33) is GRANTED.

FURTHER, that it is ORDERED that the settlement in the sum of \$315,000.00 is APPROVED, this Court specifically finding that it is fair and reasonable and has been reached in good faith.

FURTHER, that it is ORDERED that the reimbursement from the settlement proceeds to the Law Offices of James Morris for disbursements incurred by that firm in the sum of \$36,080.74 is APPROVED.

FURTHER, that it is ORDERED that the payment of attorneys' fees to the Law Offices of James Morris, pursuant to the Retainer Agreement of November 30, 2004 in the sum of \$92,973.09 is APPROVED.

FURTHER, that it is ORDERED that the payment of \$25,000.00 to the Illinois National Insurance Company in full and final satisfaction of the Workers' Compensation lien is APPROVED.

FURTHER, all parties are DIRECTED to cooperate fully and execute any and all supplementary documents and to take all additional actions necessary to give full force and effect to the terms and intent of the settlement.

FURTHER, that Plaintiff, as Administratrix of the Estate of Earl A. Kay, is DIRECTED to make application to the State of New York Surrogate's Court of Erie County for an Order of allocation and distribution of the net proceeds of the settlement in the sum of \$160,946.17 pursuant to § 5-4.4 of the New York Estates, Powers and Trusts Law.

FURTHER, that the Clerk of the Court is directed to take the steps necessary to close this case.

SO ORDERED.

Dated: January 6, 2012  
Buffalo, NY

s/William M. Skretny  
WILLIAM M. SKRETNY  
Chief Judge  
United States District Court